

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 29, 1976

To Arthur Burton, Superintendent

Dept. Bureau of Banking

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject Interlocking Directorships: Federally-chartered Institutions

This memorandum is in response to Deputy Superintendent Leslie Hilton's request for an opinion of this office dated August 25, 1976. Mr. Hilton's question concerns the applicability of State statutory prohibitions to federally-chartered financial institutions. The prohibition in question prevents a "... director, corporator, officer or employee of a financial institution, credit union or financial institution holding company authorized to do business in this State ... " from serving in these capacities in any other such institution, credit union, or holding company. 9-B M.R.S.A. § 462, 1. The two positions which have caused the question are directorships in a federally-chartered "national" bank and a federally-chartered savings and loan association, both of which have their principal offices in and do business in Maine.

The provisions of Title 9-B M.R.S.A. quite clearly prohibit the interlocking directorships in question. Each of the operant terms of § 462,1 which are relevant here, are statutorily defined. The definitions of the financial bodies covered by the section all include those "organized under provisions of federal law and maintaining[ing] its principal office in this State." 9-B M.R.S.A. § 131-2, 12-A and 17-A. Furthermore, the amendment to Title 9 which recently added sections 12-A and 17-A, contained a Statement of Fact that this amendment was designed to "... make what is now implicit in the present statutes." P.L. 1975, c. 666, §§ 2 and 3; L.D. 2057. Therefore, it is clear that the Legislature intended to include certain federally-chartered institutions within the scope of Title 9-B, including the prohibitory provisions. For these reasons, it is our opinion that the provisions in question are applicable to federally-chartered organizations.

The foregoing opinion is given with recognition of the fact that the question lies in the unsettled legal area of State regulation of federally-chartered banks and other financial organizations. We also recognize possible arguments contrary to our opinion. However, we do not believe that any of the contrary arguments are so clearly conclusive that they would override the presumption that enactments of our Legislature are valid and our duty to enforce and defend the validity of those enactments.

S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe